IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM ROCK, NO. 1:11-CV-01839-SHR

> Plaintiff Judge Sylvia H. Rambo

DONNA ASURE, GARY McFARLAND, **ELECTRONICALLY FILED**

SUSAN McCOOL, JANET WEIDENSAUL. JOHN DOE MEDICAL COMPANY,

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CIVIL ACTION – LAW DR. DEBORAH WILSON, LINDA KELLY and

GRACE RAMOS-HUERTAS. JURY TRIAL DEMANDED

Defendants

RESPONSE OF DEFENDANTS DR. DEBORAH WILSON AND GRACE RAMOS-HUERTAS IN OPPOSITION TO PLAINTIFF'S SECOND MOTION TO COMPEL

AND NOW, come Defendants Dr. Deborah Wilson and Grace Ramos-Huertas, by and through their counsel, John R. Ninosky of Johnson, Duffie, Stewart & Weidner, P.C., and file this Response in Opposition to Second Motion to Compel (Doc. 73) as follows:

- 1. Plaintiff, acting pro se, filed his original Complaint on October 5, 2011, alleging violations of his civil rights guaranteed under the United States Constitution. (Doc. 1).
- 2. That original Complaint contained allegations that Jane Doe (a doctor), Jane Doe (a nurse) and John Doe Medical Company all failed to make a referral to a specialist within five (5) days of Plaintiff's initial injury and treatment at Pocono Medical Center which resulted in a later surgery at another facility.
- 3. By Order dated April 3, 2012, Dr. Wilson and Nurse Ramos-Huertas were named as parties and Summons were issued thereafter.
- It is admitted that Plaintiff propounded written discovery (Interrogatories) to the 4. Defendants, which were received in early June 2012.

- 5. Plaintiff has also propounded other discovery and requests which have been answered.
- 6. The current deadline for the completion of discovery is August 20, 2012, however, Plaintiff has filed a Motion for Extension and counsel for the Responding Defendants has indicated that an additional 45 days may be appropriate.
- 7. Defendants' counsel has answered the Interrogatories at issue. The same were mailed to the Plaintiff on August 29, 2012.
- 8. If the Plaintiff would have complied with Local Rule 26.3 or F.R.C.P. 37(a)(1), he would have received this information and status update. However, again, Plaintiff has not conferred with counsel for these Defendants concerning the discovery motion as required and has not filed a certification that he attempted to resolve this discovery issue with counsel before involving the Court. As such, Plaintiff's Motion to Compel is both non-compliant with Civil Rules and is moot.
- 9. Plaintiff has asked for sanctions in the amount of \$2,500 to compensate him for the tardiness of the answers to Interrogatories and for his costs in filing this Motion.
- 10. Plaintiff provides no factual basis for this request nor has Plaintiff alleged how he is prejudiced.
- 11. As stated, the Interrogatories have been answered and counsel for the Responding Defendants has agreed to an extension of the discovery deadline in this case. Plaintiff did not confer with counsel for the Defendants before filing this Motion and so he cannot receive sanctions under F.R.C.P. 37.

WHEREFORE, Deborah Wilson, D.O. and Grace Ramos-Huertas respectfully request this Court deny Plaintiff's Second Motion to Compel.

Respectfully submitted,

JOHNSON, DUFFIE, STEWART & WEIDNER

By: s/John R. Ninosky

John R. Ninosky, Esquire Attorney I.D. No. 78000

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Attorney for Deborah Wilson, D.O. and

Grace Ramos-Huertas

Date: August 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2012, I electronically filed the foregoing *Response in Opposition to Second Motion to Compel* with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Gerard J. Geiger, Esquire Newman, Williams, Mishkin, Corveleyn, Wolfe & Fareri 712 Monroe Street Stroudsburg, PA 18360 gqeiger@newmanwilliams.com Counsel for Donna Asure

I hereby certify that a copy of the foregoing document has been served on the following non-CM/ECF participants by depositing the same in the United States Mail, postage prepaid, in Lemoyne, Pennsylvania on August 30, 2012:

William Rock (JG 4029) SCI - Houtzdale SPECIAL MAIL - OPEN ONLY IN PRESENCE OF THE INMATE P.O. Box 100 Houtzdale, PA 16698-1000 Pro Se Plaintiff

JOHNSON, DUFFIE, STEWART & WEIDNER

By: <u>s/John R. Ninosky</u>
John R. Ninosky